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COURT OF CRIMINAL APPEALS
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No. PD-0804-17

TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
11/30/2017
DEANA WILLIAMSON, CLERK

Ex parte Osvaldo Garcia, Appellee

Appeal from Cameron County

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STATE'S BRIEF ON THE MERITS

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IDENTITY OF JUDGE, PARTIES, AND COUNSEL

* The parties to the trial court's judgment are the State of Texas and Appellee, Samuel Osvaldo Garcia.

* The trial Judge was the Honorable Leonel Alejandro, 357th District Court.

* The habeas Judge was the Honorable Juan A. Magallanes, 357th District Court.

* Trial counsel for the State was Christine Marie Gorman, 964 E. Harrison, Brownsville, Texas 78520.

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No. PD-0804-17

TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

Ex parte Osvaldo Garcia, Appellee

Appeal from Cameron County

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STATE'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

This Court granted review to decide whether *Ex parte De Los Reyes*' holding that *Padilla* claims are barred on post-conviction habeas applies to a claim of affirmative "misadvice" about deportation consequences. The answer may be "no" under *Ex parte Aguilar*, depending on its applicability, or, alternatively, "yes" under pre-*Padilla* Texas precedent categorizing it as a collateral consequence.

STATEMENT REGARDING ORAL ARGUMENT

The State did not request oral argument, and the Court did not grant it.

STATEMENT OF THE CASE

Appellee pled guilty to possession of cocaine with intent to deliver. 1 CR 26-31. His ten-year prison sentence was suspended for ten years, and he was fined $500. 1 CR 26-31. After being deported and then illegally returning to the United States, Appellee filed an Article 11.072[1] application for a writ of habeas corpus. He claimed that his trial counsel wrongly admonished him that he would not be deported if convicted. The habeas court granted relief. The Thirteenth Court of Appeals affirmed, holding that Appellee's affirmative "misadvice" claim is cognizable—not *Teague*-barred—and that counsel rendered ineffective assistance. *Ex parte Garcia*, __S.W.3d__, No. 13-16-00427-CR, 2017 Tex. App. LEXIS 6488 (Tex. App.—Corpus Christi 2017).

STATEMENT OF PROCEDURAL HISTORY

The habeas court initially denied relief on Appellee's TEX. CODE CRIM. PROC. art. 11.072 application. *See Ex parte Garcia*, No. 13-14-00501-CR, 2016 Tex. App. LEXIS 1117, at *3 (Tex. App.—Corpus Christi Feb. 4, 2016) (not designated for publication). The Thirteenth Court of Appeals remanded because the record was inadequate to address Appellee's claims. *Id*. at *7-9. The habeas court held a live

[1] TEX. CODE CRIM. PROC. art. 11.072 (procedures for writs of habeas corpus when community supervision was granted).

evidentiary hearing, entered findings and conclusions, and granted Appellee relief by vacating his conviction. 1 Supp. CR 4-5. The court of appeals affirmed. *Ex parte Garcia*, 2017 Tex. App. LEXIS 6488, at *1, 42.

ISSUE PRESENTED

Is a claim that counsel misadvised a defendant about the deportation consequences associated with a guilty plea cognizable on habeas despite *Ex parte De Los Reyes*' holding that *Padilla* does not apply retroactively on habeas?

SUMMARY OF THE ARGUMENT

This Court's September 20th decision in *Ex parte Aguilar* may answer whether *Ex parte De Los Reyes* bars review of Appellee's claim that his counsel rendered ineffective assistance for misadvising him about the deportation consequences of his guilty plea. __S.W.3d__, No. WR-82-014-01, 2017 Tex. Crim. App. LEXIS 894 (2017). If *Ex parte Aguilar* implicitly determined that no "new rule of law" was announced and that all "misadvice" immigration consequences claims are cognizable on habeas, and have historically been so, then Appellee's claim is cognizable. However, if *Ex parte Aguilar* is limited to its facts, and thus considered a variation of now-established *Padilla* precedent, then retroactivity still needs to be resolved. Retroactivity is an independent state law doctrine and, according to this Court's precedent before *Padilla*, deportation was a collateral consequence. Counsel would not have been ineffective for providing wrong advice about it. Therefore, pre-*Padilla*

deportation "no-advice" and "misadvice" ineffective assistance of counsel claims are barred on habeas.

FACTS

Appellee was a lawful permanent resident of the United States since childhood. 1 CR 33, 50. In 2002, he pled guilty to possession of cocaine with intent to deliver; his sentence was suspended, and he was granted community supervision. 1 CR 26-31. As a result of the conviction, Appellee was deported to Guatemala. 1 CR 34. He remained in Guatemala for two months before illegally reentering the United States. 1 CR 32-61.

Appellee filed an Article 11.072 application for a writ of habeas corpus, challenging the 2002 possession conviction. 1 CR 32-61. He alleged that his trial counsel told him it "would probably be okay" and "probably not result in deportation" when Appellee inquired into the matter. 1 CR 34-39. The State filed a response, arguing that Appellee's ineffective assistance of counsel claim is *Teague*-barred,[2] barred by laches, and otherwise without merit. 1 CR 62-73. The habeas court denied relief. The Thirteenth Court of Appeals reversed and remanded because the habeas

[2] Adopting Justice Harlan's understanding of habeas "cognizability," the Supreme Court in *Teague v. Lane* held that a new rule of constitutional law is not applied retroactively to final convictions challenged on habeas. 489 U.S. 288, 306-10 (1989).

court did not comply with procedural requirements in Article 11.072. *Ex parte Garcia*, 2016 Tex. App. LEXIS 1117, at *9.

On remand, Appellee amended his application, claiming that his "misadvice" claim is not barred under the United State Supreme Court's decision in *Chaidez v. United States*, 568 U.S. 342 (2013), which held that claims under *Padilla v. Kentucky*, 559 U.S. 356 (2009), are not retroactive for purposes of habeas. *Chaidez*, according to Appellee, left open the possibility that claims of ineffective assistance of counsel based on affirmative "misadvice" (versus "no-advice") about deportation consequences would not be *Teague*-barred. Finding Appellee's allegations to be true, the habeas court granted relief. The Thirteenth Court of Appeals affirmed. It concluded that Appellee's affirmative "misadvice" claim is not controlled by *Ex parte De Los Reyes*,[3] which followed *Chaidez* and held that *Padilla* is not retroactive on state habeas. *Ex parte Garcia*, 2016 Tex. App. LEXIS 1117, at *1, 42.

ARGUMENT

In *Padilla v. Kentucky*, the Supreme Court held that for trial counsel to be competent, counsel must advise a client whether the client will be subject to

[3] 392 S.W.3d 675 (Tex. Crim. App. 2013).

deportation.[4] 559 U.S. at 360. Padilla's counsel "provided him false assurance that his conviction would not result in the removal from this country." *Id*. at 368. The U.S. Solicitor General argued that Padilla was only entitled to relief under ineffective assistance of counsel "to the extent that he has alleged affirmative misadvice." *Id*. at 369. The Court determined, however, that drawing such a distinction would lead to two absurd results: first, it would encourage counsel to stay silent on a matter fundamental to weighing the advantages and disadvantages to pleading guilty; second, it would deny a class of persons "rudimentary advice on deportation even when it is readily available." *Id*. at 370-71.

Approximately three years later, in *Chaidez v. United States*, the Supreme Court addressed whether *Padilla* is retroactive—available as a remedy—under *Teague* for purposes of federal habeas corpus cognizability. 568 U.S. at 346. Chaidez's attorney never informed her that she would be subject to deportation, so "at the time of her plea[,] she remained ignorant of it." *Id*. at 345. The Court held that *Padilla* announced a new rule of law and therefore it cannot be retroactively applied to final convictions. "It was *Padilla* that . . . made the *Strickland* test operative . . . when a

[4] The questions presented for review involved both "no-advice" and "misadvice." Brief of Petitioner, at i, available at https://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_07_08_08_651_Petitioner.authcheckdam.pdf.

lawyer gives (or fails to give) advice about immigration consequences." *Id*. at 353.

This Court adopted *Chaidez*'s holding for purposes of Texas' habeas jurisprudence in *Ex parte De Los Reyes*, 392 S.W.3d at 679. As a result, the Court denied relief on De Los Reyes' claim that his attorney rendered ineffective assistance for failing to advise him that he would "almost certainly" be deported. *Id*. at 676, 679.

1. *Ex parte Aguilar* may mean that Appellee's claim is cognizable.

In September, while this PDR was pending, this Court granted relief in *Ex parte Aguilar*. 2017 Tex. Crim. App. LEXIS 894, at *15. There, Aguilar claimed that his attorney misadvised him about the consequences of his guilty plea to a "removable offense." *Id*. at *2-3. Though counsel had consulted with an immigration attorney, her advice was later proven wrong, and Aguilar became ineligible to maintain his temporary protected status. *Id*. This Court filed and set the case to decide, "notwithstanding *Padilla*, whether a defendant's guilty or no contest plea will be rendered involuntary if counsel affirmatively misadvises a defendant about the immigration consequences of his plea." *Ex parte Aguilar*, WR-82,014-01, 2016 Tex. Crim. App. Unpub. LEXIS 323, at *2 (Tex. Crim. App. Apr. 6, 2016). The Court held that wrong advice about removable offenses that alter a non-immigrant alien's "temporary protected status" falls within *Padilla*'s ambit: "We extend *Padilla* to the

circumstances where a defendant's guilty plea causes him to automatically lose legal immigration status and become removable." *Id*. at *4-5, 15. Because this Court classified *Ex parte Aguilar*'s claim as an "extension" of "*Padilla*," the decision's breadth is unclear and can be interpreted in three ways:

1. *Ex parte Aguilar* distinguished between two classes of immigration consequences claims: (1) no deportation advice *Padilla* claims," which are not cognizable on habeas per *Ex parte De Los Reyes*, and (2) "affirmative loss-of-protected-status-misadvice claims," which are cognizable because the application of now-established *Padilla* ineffective assistance of counsel law means there is no "new rule of law"; therefore, *Ex parte Aguilar* is just a variation of a *Padilla* claim.[5]

2. *Ex parte Aguilar* announced a "new rule of law"—applicable to the loss of a protected status—just as *Padilla* did with deportation.[6] In such a case, then it would be *Teague*-barred under *Ex parte De Los Reyes*[7] for the same reason as

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[5] It is important to note that this is plausible because, unlike Appellee, Aguilar pled guilty after *Padilla*, so *Padilla*'s retroactivity was not an issue.

[6] *See Ex parte Aguilar*, 2017 Tex. Crim. App. LEXIS 894, at *19 (Yeary, J., concurring) ("seems to me that trial counsel had no greater duty under *Padilla* than to advise Applicant that his guilty plea could have deportation consequences, at *21 (Keller, P.J., dissenting) ("I would not extend *Padilla*'s holding to such a case.").

[7] Retroactivity was not an issue in *Padilla* because it was a state habeas case. *Danforth v. Minnesota*, 552 U.S. 264, 282 (2008) ("the *Teague* decision limits the kinds of constitutional violations that will entitle an individual to relief on federal habeas, but does not in any way limit the authority of a state court, when reviewing its own state criminal convictions, to provide a remedy for a violation that is deemed 'nonretroactive' under *Teague*."). This Court follows *Teague* for purposes of state habeas law. *Ex parte Lave*, 257 S.W.3d 235, 237 (Tex. Crim. App. 2008).

Padilla deportation claims, and the Court therefore erred to address the merits.

3. Because the Court was aware of *Ex parte De Los Reyes* and did not apply it, *Ex parte Aguilar* implicitly determined that no "new rule of law" was announced and that all affirmative "misadvice" immigration consequences claims are cognizable on habeas.

The third is the most likely intended understanding because *Ex parte De Los Reyes* was a major decision that could not be circumvented on habeas (unlike traditional discretionary review on direct appeal or federal habeas). *See Ex parte Douthit*, 232 S.W.3d 69, 73 (Tex. Crim. App. 2007) (cognizability is always a threshold requirement); *see, e.g., Ex parte St. Aubin*, __ S.W.3d__, Nos. WR-49,980-12-16, 2017 Tex. Crim. App. LEXIS 885, at *6 n.14 (Tex. Crim. App. 2017) (plurality) ("waiver" by the State is not an exception to Section 4). Further, it explains why the issue framed by the Court[8] in *Ex parte Aguilar* stated, "notwithstanding *Padilla*, whether a defendant's guilty or no contest plea will be rendered involuntary if counsel affirmatively misadvises a defendant about the immigration consequences of his plea." *Ex parte Aguilar*, 2016 Tex. Crim. App. Unpub. LEXIS 323. So it appears that the Court intended to set aside *Padilla* and by extension *De Los Reyes*—limiting it to its facts and place in history—and decide

[8] More significance can be placed on the wording of the issue because, unlike PDR cases where a party crafts the issue, the issue was constructed by the Court in filing and setting the case.

whether, as a general rule, affirmative "misadvice" about immigration consequences that lead to "the path toward presumptive removal" provide a basis for granting habeas relief.[9] *Ex parte Aguilar*, 2017 Tex. Crim. App. LEXIS, at *8; *see, generally, Ex parte Torres*, 483 S.W.3d 35, 47 (Tex. Crim. App. 2016) (applying *Hill v. Lockhart*'s test: but for counsel's erroneous advice, there is a reasonable probability the person would have insisted upon going to trial).

This reading of *Ex parte Aguilar* would be consistent with this Court's decisions in *Ex parte Moody* and *Ex parte Moussazadeh (III)*.[10] *Ex parte Moody* held that counsel's erroneous advice that applicant could serve his state and federal sentences concurrently rendered his plea involuntary. 991 S.W.2d 856, 858-59 (Tex. Crim. App. 1999). And *Ex parte Moussazadeh* held that counsel's failure to advise, or "misadvice," about parole eligibility may render a guilty plea involuntary. 361 S.W.3d 684, 691-92 (Tex. Crim. App. 2012); *Ex parte Young*, 644 S.W.2d 3, 4-5

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[9] Judge Alcala would likely agree with this understanding based on her dissent in *Ex parte Salazar*. 508 S.W.3d 291, 294 (Tex. Crim. App. 2016) (*Padilla* does not apply to active misinformation about possible deportation consequences).

[10] *See also Padilla*, 559 U.S. at 384-86 (Alito, J., concurring) (prohibiting affirmative "misadvice" on a matter crucial to the decision to plead guilty, like deportation, "is faithful to the scope and nature of the Sixth Amendment duty this Court has recognized in past cases" and federal circuit courts have distinguished between counsel who remains silent and counsel who gives affirmative "misadvice" in the plea context).

(Tex. Crim. App. 1983); *see also Mitschke v. State*, 129 S.W.3d 130, 137 (Tex. Crim. App. 2004) (Keller, P.J., concurring) (rejecting the direct/collateral consequences dichotomy and stating that the proper inquiry is whether the failure to admonish about sex-offender registration rendered the plea involuntary). And, as Judge Yeary just pointed out, this Court in *Ex parte Griffin*[11] stated, "In several cases, [we have] reversed convictions or granted habeas corpus relief because of a defense attorney's inaccurate advice to a defendant about the consequences of his plea of guilty."[12] *Ex parte Aguilar*, 2017 Tex. Crim. App. LEXIS 894 (Yeary, J., concurring), at *20.

The Supreme Court's recent decision in *Lee v. United States* may also be instructive on cognizability as it relates to "misadvice" immigration claims. 137 S. Ct. 1958 (2017). Lee sought habeas relief, alleging that his attorney rendered ineffective assistance by assuring him he would not be deported if he pled guilty to

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[11] 679 S.W.2d 15, 17 (Tex. Crim. App. 1984).

[12] *Ex parte Griffin* cited *Ex parte Kelly*, 676 S.W.2d 132 (Tex. Crim. App. 1984) (probation "misadvice"); *Ex parte Stansberry*, 702 S.W.2d 643 (Tex. Crim. App. 1984) (per curiam) (appealability "misadvice"); *Ex parte Young*, 644 S.W.2d at 4-5 (parole eligibility "misadvice"); *McGuire v. State*, 617 S.W.2d 259 (Tex. Crim. App. 1981) (false promise by the State that plea could be withdrawn); *Ex parte Burns*, 601 S.W.2d 370 (Tex. Crim. App. 1980) ("misadvice" due to lack of knowledge that the death penalty was declared unconstitutional). *See also Ex parte Covey*, PD-0145-09, 2010 Tex. Crim. App. Unpub. LEXIS 189, at *16-17 (Tex. Crim. App. 2010) (even though sex-offender registration is non-putative, an attorney's wrong advice about it relied upon in pleading guilty rendered the plea involuntary).

possession of ecstasy with intent to distribute in federal court.[13] *Id*. at 482. The parties and the Court agreed that counsel was deficient; only the prejudice prong was contested. *Id*. at 1964-69. The Supreme Court did not consider the case to be controlled by *Padilla*, and thus *Chaidez*'s *Teague*-bar, as it addressed the merits after being informed by Lee that the lower courts agreed that Lee's affirmative "misadvice" claim was not barred. Though the United States asserted that Lee's claim was barred under *Chaidez* in the district court, *Lee v. United States*, 2013 U.S. Dict. LEXIS 186239 (W.D. Tenn. 2013), the Solicitor General abandoned that argument in the Supreme Court. Even though *Lee* is not dispositive on the "misadvice" issue, it is worthy of acknowledgment.[14]

If *Ex parte Aguilar* holds that affirmative general immigration "misadvice" claims are cognizable, apart from *Padilla* deportation "no-advice" claims, then Appellee's deportation-based claim is not *Teague*-barred.[15] If this is the correct

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[13] Lee pled guilty in June 2009, before *Padilla* issued in 2010. http://www.scotusblog.com/wp-content/uploads/2016/10/16-327-cert-petition.pdf.

[14] One explanation for the Solicitor General's failure to raise *Teague* is that it urged the Supreme Court in *Padilla* to limit the right to counsel to claims involving of affirmative "misadvice", reasoning that counsel is required to provide accurate advice when it is given. 559 U.S. at 369-70.

[15] Appellee cannot mount any future "no-advice" or "misadvice" claim because, due to his most recent unlawful re-entry after being deported, he will always be deportable.

understanding of *Ex parte Aguilar*'s rationale, the Court should take this opportunity to explicitly describe how these claims fit within the current habeas cognizability scheme.

2. If Retroactivity is Still Unsettled, "Misadvice" Claims are Barred.

If *Ex parte Aguilar* was intended to be read under the first option discussed above, *i.e.*, limited to its facts, then it is not determinative, and this Court still needs to settle whether "misadvice" deportation claims are *Teague*-barred.

A. The Once "Chink-Free"[16] Wall Between Direct and Collateral Consequences.

Because courts had historically treated deportation as a collateral consequence, a guilty plea could still be deemed voluntary, despite "misadvice" about deportation, because collateral matters were outside the sphere of what was legally required for a knowing and voluntary plea. *See Brady v. United States*, 397 U.S. 742, 755 (1970) (a person must be aware of "direct" consequences). In other words, "knowing and voluntary" was judged according to what information was believed to be central to the plea process, which included only criminal justice system issues. This Court has recognized the distinction:

> [A] number of direct consequences of a plea of guilty, such as the loss for a period of years of the right to vote and the right to possess firearms,

[16] *Chaidez*, 133 S. Ct. at 1110.

> ineligibility for certain professional licences, etc., do not necessarily render an otherwise voluntary plea involuntary by the failure of the trial court to admonish a defendant of each of those direct, non-punitive consequences. These are matters that neither involve the nature of the sentence that could be imposed nor are the direct, punitive consequences about which the trial court must admonish a defendant.

Mitschke, 129 S.W.3d at 135. So collateral matters, like immigration consequences, were superfluous.[17] *Ex parte Morrow*, 952 S.W.2d 530, 536 (Tex. Crim. App. 1997) (counsel was not ineffective for failing to advise about "adverse consequences" that his guilty pleas would have in the event of a reversal and retrial); *Mitschke*, 129 S.W.3d at 134 (noting four of eighty-six non-Texas state court decisions have described deportation as a collateral consequence); *Carranza v. State*, 980 S.W.2d 653, 565-57 (Tex. Crim. App. 1998) (failure to admonish about deportation consequences as required by TEX. CODE CRIM. PROC. art. 26.13 did not implicate a constitutional right). Courts relying on the collateral consequence distinction did not regard deportation as unimportant but, instead, as ancillary to the criminal prosecution; therefore, competent advice was not required. *See Chaidez*, 568 U.S. at 357. Because of this collateral status, *Chaidez* suggests that the Supreme Court

[17] The Supreme Court has acknowledged that civil commitment and asset forfeiture, sex offender registration, disqualification from public benefits, and disfranchisement are commonly considered collateral. *Chaidez*, 568 U.S. at 349 n.5.

considered "no-advice" and "misadvice" under the broader newly minted Sixth Amendment right in deciding retroactivity. The Court pointed out, "Before *Padilla*, we had declined to decide whether the Sixth Amendment had any relevance to a lawyer's advice about matters not related to the criminal proceeding." *Id.* at 353. *Chaidez* also acknowledged that a minority of courts would entertain claims concerning material misrepresentations about deportation and other collateral matters, but then asserted that such claims "lived in harmony with the exclusion of claims like Chaidez's" and therefore not all "reasonable judges, prior to *Padilla*, thought that they were living in a *Padilla*-like world." *Id*. at 356. So *Padilla* was the first time that the Sixth Amendment right to counsel applied across the board to deportation consequences. Until that right was recognized, and deportation as a whole was excised from the collateral consequences category, it had no Sixth Amendment significance. *See e.g., Chavarria v. United States*, 739 F.3d 360, 362-64 (7th Cir. 2014) (rejecting distinction between no-advice and "misadvice" for purposes of *Teague/Chaidez*). Therefore, the "no-advice"/"misadvice" distinction is a matter of semantics. Either way, no Sixth Amendment right was implicated in any pre-*Padilla* case (save the three circuits mentioned by the Supreme Court). While *Chaidez* is informative and instructive, it is not controlling. Texas's retroactivity law is an independent state doctrine. *Ex parte Lave*, 257 S.W.3d at 235-37 (federal law does

not require states to apply *Teague*). Therefore, the resolution hinges on a survey of state law.

B. "Misadvice Claims" are Barred—Texas was Not "Living in a *Padilla*-Like World."

The pertinent question is how this Court treated "misadvice" immigration consequences claims before *Padilla*. *See e.g., Castro-Taveras*, 841 F.3d 34, 44 (1st Cir. 2016) (applying pre-*Padilla* circuit court precedent in deciding whether the "misadvice" claim would have been considered if raised); *United States v. Chan*, 792 F.3d 1151, 1154-58 (9th Cir. 2015) (considering a pre-*Padilla* circuit case holding counsel ineffective for "misadvice" on deportation consequences). There is no pre-*Padilla* ineffective assistance case on point from this Court, only analogous cases granting relief based on counsel's parole eligibility "misadvice" or concurrent federal/state sentence service "misadvice."[18] *See Ex parte Young*, 644 S.W.2d at 5 (parole; decided in 1983); *Ex parte Moody*, 991 S.W.2d at 858-59 (concurrent service; decided in 1999). However, this Court had affirmatively held that admonishments about deportation consequences—a collateral issue before

[18] No intermediate appellate court cases from January 1, 1987, to December 31, 2009, finding ineffective assistance based on immigration "misadvice" have been found. One possible reason for the lack of precedent is that trial courts had an independent duty to warn about deportation consequences. As a result, any error made by counsel was usually found harmless.

Padilla—are not constitutionally required. *Carranza*, 980 S.W.2d at 656; *State v. Jimenez*, 987 S.W.2d 886, 889 (Tex. Crim. App. 1999). With no constitutional right, Sixth Amendment or otherwise, no defense attorney practicing in Texas before *Padilla* would have been held ineffective for failing to advise or for misadvising a client about a collateral consequence. "'[C]ounsel's performance will be measured against the state of the law in effect during the time of trial and we will not find counsel ineffective where the claimed error is based upon unsettled law.'" *Ex parte Chandler*, 182 S.W.3d 350, 359 (Tex. Crim. App. 2005) (quoting *Ex parte Welch*, 981 S.W.2d 183, 184 (Tex. Crim. App. 1998)). So until *Padilla*, Texas was not operating in a "*Padilla*-like world." *Ex parte De Los Reyes* should therefore be applied to bar review of Appellee's "misadvice" claim.[19]

[19] It should be recognized that, in *Ex parte Calderon*, an unpublished *per curiam* opinion issued a week after *Ex parte De Los Reyes*, this Court granted habeas relief when counsel gave erroneous advice about immigration consequences. AP-77,006 (Tex. Crim. App. Mar. 27, 2013).

PRAYER FOR RELIEF

The court of appeals' decision should be reversed; Appellee is not entitled to habeas relief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to the WordPerfect word count tool this document contains 3,398 exclusive of the items excepted by TEX. R. APP. P. 9.4(i)(1).

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the State's Brief has been served on November 30, 2017, via email or certified electronic service provider to:

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